

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LAWRENCE HARDY, RAMONE CROSS, and
SHAWN SMITH, individually and on behalf of all others
similarly situated,

08 Civ. 2460 (SHS)

Plaintiffs,

– against –

BRIAN FISCHER, in his capacity as Commissioner
of the New York State Department of Correctional
Services (DOCS), and in his individual capacity;
ANTHONY J. ANNUCCI, in his capacity as Deputy
Commissioner and Counsel for DOCS, and in his
individual capacity; LUCIEN J. LECLAIRE, JR., former
Acting Commissioner of DOCS, in his individual capacity;
GLENN S. GOORD, former Commissioner of DOCS,
in his individual capacity; and JOHN/JANE DOES 1-50
(DOCS Supervisory, Training, and Policy Personnel),

Defendants.

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**SUPPLEMENTAL DECLARATION OF MATTHEW D. BRINCKERHOFF IN
SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY RELIEF**

MATTHEW D. BRINCKERHOFF, an attorney admitted to practice before this
Court, declares under penalty of perjury as follows:

1. I am a member of Emery Celli Brinckerhoff & Abady LLP (“ECBA”), co-counsel for plaintiffs and the putative plaintiff class in this case. I submit this declaration in support of plaintiffs’ motion for a preliminary injunction.
2. Attached hereto as Ex. 1 is a copy of a letter submitted by Michael J. Keane on behalf of the Department of Correctional Services in the state court declaratory judgment action.
3. I swear under penalty of perjury that the foregoing is true and correct.

Dated: July 14, 2008
New York, New York

/s/
MATTHEW D. BRINCKERHOFF

Ex. 1

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

LESLIE G. LEACH

EXECUTIVE DEPUTY ATTORNEY GENERAL

518-402-2223

STATE COUNSEL DIVISION

June 27, 2008

JUNE DUFFY
ASSISTANT ATTORNEY GENERAL IN CHARGE
LITIGATION BUREAU

Honorable John C. Egan, Jr.
Supreme Court of the State of New York
County of Albany
50 Chapel Street
Albany, New York 12207

Re: In re: State of New York, et al. v. Myers, et al. (4834-08)

Dear Justice Egan:

This Office represents plaintiffs (the State of New York, the New York Department of Correctional Services (“DOCS”), and the New York State Division of Parole (“Parole”) in the above-referenced matter, in which plaintiffs’ application for a preliminary injunction is pending before Your Honor.

The New York State Legislature passed the Governor’s Program Bill #73 (a copy of which is enclosed), which provides, inter alia, procedures that plaintiffs and defendants are to follow in resolving issues arising out of criminal sentences where mandatory post-release supervision may not have been properly imposed by the courts. The Bill encompasses the relief plaintiffs seek in their application to this Court for a preliminary injunction. When signed into law, which is expected shortly, the Bill will take effect immediately and render plaintiffs’ application for an injunction moot. Plaintiffs can then withdraw their application.

Accordingly, plaintiffs request (on consent of the parties) that the Court extend the time for the parties to file additional submissions regarding the application for a preliminary injunction, and suspend ruling on the application, until the Bill is signed by the Governor.

Plaintiffs will withdraw their pending application for injunctive relief upon the Bill’s effective date, without prejudice to renew their application should the circumstances so require.

Respectfully submitted,

Gerald J. Rock
Michael J. Keane
Assistant Attorneys General

encl.
cc: see attached